(47)

HIGH COURT OF JUDICATURE, CHHATTISGARH AT BILASPUR

Writ Petition No. 2182 of 2003

PETITIONER: Sarkar Singh, S/o Badri Prasad
Aged about 50 years, R/o
Village – Jatagharra,
Tehsil Dhamdha, District Durg.

Versus

RESPONDENTS:

1. State of Chhattisgarh,
Through - The Secretary,
Revenue Department,
D.K.S. Bhawan, Raipur (C.G.).

2. President, Board of Revenue,
Chhattisgarh (C.G.).

3. Sub Divisional Officer,
Durg (C.G.).

4. Tehsildar,
Dhamdha, District: Durg.

POST FOR ORDER ON 16th DECEMBER, 2003

Sd/-
L.C. Bhadoo
Judge

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4. Tehsildar,
Dhamdha, District: Durg.

Shri Ajay Shrivastava, Advocate for the petitioner.

Shri Ranbir Singh, Govt. Advocate for the State/respondents 1, 3 and 4.

Before: Hon'ble Mr. Justice L.C. Bhadoo, J.

O R D E R

(Passed on 16th December, 2003)

1. By this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has challenged the order dated 9-7-2003 passed by the Board of Revenue in Appeal case No. 1062/A-68/2002-2003, order dated 9-5-2003 passed by the Sub Divisional Officer, Durg in case No. 4-A/68/2002-2003 and order dated 29-10-2002 passed by Tehsildar, Dhamdha in case No. 5-A/68/2002-2003.

2. The petitioner's case is that all the three orders passed by the Board of Revenue, Sub Divisional Officer and the Tehsildar are

against the principle of natural justice and ignoring the earlier decisions passed in respect of the disputed land. The proper opportunity was not given to the petitioner to defend his case. Even the full particulars of the land including map and date of encroachment and the date of the report was not mentioned in the show cause notice. The order was passed hurriedly without giving proper opportunity to the petitioner. The statements were recorded by the Tehsildar in a printed form and no opportunity for cross-examination was given. The Board of Revenue passed the impugned order without calling for the records.

3. The petitioner being an illiterate villager was not able to maintain the record. The respondents ought to have remanded back the matter to Tehsildar to see whether any encroachment case was previously instituted in respect of the land in question and the decision of the Civil Suit No. 33-A/86 passed by the 4th Civil Judge, Class-2, Durg on 23-12-1987 was not considered, therefore, orders be set-aside.

4. I have heard the learned counsel for the parties.

5. A perusal of the Annexures shows that Patwari Halka made a report Annexure-P/5 to Tehsildar, about the illegal encroachment by the petitioner on Government land bearing Khasra No. 607/1, Rakba 2.00 h. by converting it into a field. On this, show-cause notice, Annexure-P/6 issued by Tehsildar and thereafter Tehsildar recorded the statement of Patwari and of the petitioner Annexure-P/7 and passed the order dated 29-10-2002.

6. A perusal of the order dated 9-5-2003 passed by the learned Sub Divisional Officer reveals that the points were raised on behalf of the petitioner that earlier also regarding the same land encroachment proceedings were initiated which was challenged before the Civil Court and the Civil Court declared the order of

Revenue Authority as illegal. The learned S.D.O. has mentioned that the certified copy of the order was not filed and any other relevant Revenue record was also not filed to show that the land in question was declared as Bhumiswami land. It has further been mentioned that the petitioner has said that the land in question was in possession of his maternal grand father. But in this connection no document has been filed that the land in question was in possession of the family of the petitioner and his possession is not since last 6 years, whereas the petitioner's case is that the petitioner and his ancestors were in possession of the land in question even before the enactment of the Chhattisgarh Land Revenue Code, 1959 and the learned Revenue Board after relying on the record of Tehsildar dismissed the appeal.

7. A certified copy of the judgment of the Civil Court dated 23rd December 1987 has been produced as Annexure-P/9 in which Suryaprakash's right regarding land bearing Khasra Nos. 171, 174, 176, 192/2, 192/3, 192/4 and 192/5, total area 30.57 acre was declared, and it was declared that this land was in possession of Surprakash. The petitioner's claim is that before the abolition of Malgujari a civil suit was filed by Chainsingh, Shiv Singh, Baliram and Umed Singh. Chainsingh was the brother of the petitioner's father. Suryaprakash also filed the civil Suit No. 33-A/6 which was decided on 13-12-87.

8. The main argument of the learned counsel for the petitioner is that the documents of the petitioner were not considered by the Tehsildar, Sub Divisional Officer and Board of Revenue and no proper opportunity was given to the petitioner to produce the documents. Since the petitioner is claiming that the judgment passed by the Civil Court Annexure-P/9 relates to the land in question, in the circumstances, I am of the opinion that it is proper to remand the case to the Tehsildar for conducting an enquiry about the claim of the petitioner whether his ancestors were in possession of the land in question since long and whether

the land in question is the same land which was declared as Bhumiswami land of Surya Prakash in the Civil Suit No. 33-A/86 by the 4th Civil Judge, Class-II, Durg by its order dated 23-12-1987.

9. The Teshildar is directed to decide the matter after giving full opportunity to the petitioner to prove his case and to furnish his documentary evidence showing his right or title about the land in question. Even though the Section 248 of the Chhattisgarh Land Revenue Code 1959 envisages that " if any person who unauthorisedly takes or remains in possession of any unoccupied land, abadi, service land or upon any land which is the property of the Government may be summarily ejected by order of the Tehsildar." As per the provisions of this Section Tehsildar is required to conduct the summary enquiry. But when the petitioner is claiming that the land in question is in possession of the petitioner since his ancestors and for that purpose he wants to produce the judgment of the Civil Court, the Tehsildar ought to have given proper opportunity to the petitioner to prove his case by adducing the documentary or other evidence.

10. In the result, for the foregoing reasons, the orders passed by the learned Tehsildar, Sub Divisional Officer and Board of Revenue are set aside and quashed. The case is remanded back to the Tehsildar, Dhamdha to decide the matter after giving full opportunity to the petitioner to adduce documentary or other evidence to prove his title or right on the land in question.

11. The certified copy of the judgment dated 23-12-1987 passed by the 4th Civil Judge, Class-2, Durg, may be returned to the petitioner on filing a Photostat copy of the same by the petitioner for production of the same before the Tehsildar.

12. With these observations and directions, the writ petition is disposed of.

Sd/-
L.C. Bhadoo
Judge

Barve*